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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/676,722	09/28/2000	Donald L. Wilson	12548US02	2793

7590 05/22/2003

McAndrews Held & Malloy Ltd  
500 West Madison Street  
34th Floor  
Chicago, IL 60661

EXAMINER

GRIER, LAURA A

ART UNIT

PAPER NUMBER

2644

DATE MAILED: 05/22/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

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# Office Action Summary

Application No.

09/676,722

Applicant(s)

WILSON ET AL.

Examiner

Laura A Grier

Art Unit

2644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-23 is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☒ Claim(s) 1-14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 September 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to because figure 1B fails to disclose the features tube nibble coupling with the flexible eartip, as described in the specification of the invention (page 8, lines 6-8). The tube portion (41) of the flexible eartip is smaller than the outer portion (29) of the tube nipple, thus is not likely that the outer portion will be inserted into the tube portion. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

Claims 1, 10, and 16 are objected to because of the following informalities: claim 1, line 10 recites, "the angle"; claim 10, line 2, recites, "the angle"; and claim 16, line 2, recites, "the angle". There is insufficient antecedent basis. To remove issue of lack of antecedent basis, the examiner suggests that claim language in regards to the angle read as follows: "...arranged to form an obtuse angle between a longitudinal axis of the tube nipple and a vertical axis of the housing,". Appropriate correction is required.

Dependent claims 2-7, 11, are 17 are objected based of the claim objections above.

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Claims 1-7, 10-11, and 16-17 are objected to based on the claim objections, but would allowable upon overcoming the claim objections.

**Claims 8-9, 12-15, and 18-23 are allowed.**

The following is an examiner's statement of reasons for allowance: see applicant's response.

Regarding **claim 8**, the prior art of record is drawn to an earphone device comprising a housing, a receiver, and a flexible eartip. However, the prior art of record fails to specifically disclose or fairly suggest a tube nipple being located external the housing and being coupled to the flexible eartip, wherein the earphone provides a frequency response at 0 dB, thereof, as of the claimed invention.

Regarding **claim 15**, the prior art of record is drawn to an earphone device comprising a housing, a receiver, and a flexible eartip. However, the prior art of record fails to specifically disclose or fairly suggest a tube nipple being located external the housing and being coupled to the flexible eartip with an acoustic damper positioned at the first end of the tube nipple thereof, as of the claimed invention.

Regarding **claim 22**, the prior art of record is drawn to an earphone device comprising a housing, a receiver, and a flexible eartip and a tube. However, the prior art of record fails to specifically disclose or fairly suggest a flexible tube and further comprising a rigid tube nipple being located external the housing and being coupled to the flexible tube and eartip with a flexible channel, thereof, as of the claimed invention.

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**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura A Grier whose telephone number is (703) 306-4819. The examiner can normally be reached on Monday - Friday, 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Forester W. Isen can be reached on (703) 305-4386.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

**Or faxed to:**


**(703) 872-9314 (for Technology Center 2600 only)**

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

LAG

May 19, 2003

  
FORESTER W. ISEN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600